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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

VERBITSKY, GAIL KAPLAN

ART UNIT	PAPER NUMBER
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2859

DATE MAILED: 03/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/815,991

Applicant(s)

RUND, RICHARD

Examiner

Gail Verbitsky

Art Unit

2859

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 07/22/04
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_

## DETAILED ACTION

### *Claim Objections*

1. Claim 8 is objected to because of the following informalities: "the proximal surface" in lines 1-2 lacks antecedent basis, perhaps applicant should replace it with "the proximal end". Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1 and 4-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Burgert (U.S. 2967428).

Burgert discloses in fig. 2 a thermometer probe for food/ meat, the thermometer comprising a probe housing 13 having a distal end and a proximal end, the proximal end includes an opening, a temperature sensing element/ thermistor 20 protrudes through the opening, as shown in Fig. 2, and covered with a thermally conductive (copper plated) cap (coating) to be inserted in the meat, and thus, being a food safe. For claims 4-5: as shown in Fig. 2, the coating covers/ fills the opening and is substantially flush with a mouth of the opening.

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For claim 6: the temperature-sensing element protrudes through the opening and its exposed portion is covered, as shown in Fig. 2.

For claims 7-8: as shown in Fig. 2, the proximal end is slightly tapered and covered with the coating 21, also, the coating 21 is contiguous to a proximal surface of the temperature sensing element.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Burgert in view of Yoshimoto (U.S. 3606792).

Burgert discloses the device as stated above.

Burgert does not explicitly teach that the coating is a polytetrafluoroethylene (PTFE), as stated in claim 2.

Yoshimoto discloses in Figs. 1-2 a food thermometer/ probe whose coating/ covering is made of a polytetrafluoroethylene.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the coating disclosed by Burgert with the polytetrafluoroethylene coating, as taught by Yoshimoto, because both of them are alternate types of food safe coatings which will perform the same functions, of

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protecting the temperature sensing element and not contaminating food of interest, if one is replaced with the other.

6. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Burgert in view of Cueman et al. (U.S. 5328749) [hereinafter Cueman].

Burgert discloses the device as stated above.

Burgert does not explicitly teach that the coating is a thermoset powder coating, as stated in claim 3.

Cueman teaches that a thermoset powder coating can be used with utensil, thus, suggesting that it is a food safe coating. In a broad sense, it is considered, that it can be used with any device inserted in a food of interest.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the coating disclosed by Burgert with the thermoset powder coating, as taught by Cueman, because both of them are alternate types of food safe coatings which will perform the same functions, of protecting the temperature sensing element and not contaminating food of interest, if one is replaced with the other.

#### **Conclusion**

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited in the PTO-892 and not mentioned above disclose related devices and methods.

Any inquiry concerning this communication should be directed to the Examiner Verbitsky who can be reached at (571) 272-2253 Monday through Friday 8:00 to 4:00 ET.

GKV

Gail Verbitsky

Primary Patent Examiner, TC 2800



March 11, 2005